UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
2015 JUL -2 PM 3:00
S.D. OF N.Y.W.P.

ERIC FABIAN

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

CVS LLC
1 CVS DRIVE
WOONSOCKET, RI 02895

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. Typically, the company or organization named in your charge to the Equal Employment Opportunity Commission should be named as a defendant. Addresses should not be included here.)

COMPLAINT FOR EMPLOYMENT DISCRIMINATION

Jury Trial: ☑ Yes ☐ No
(check one)

15 CV 5182

JUDGE BRICCETTI

This action is brought for discrimination in employment pursuant to: *(check only those that apply)*

✓ Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).
***NOTE:** In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue Letter from the Equal Employment Opportunity Commission.*

✓ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 - 634.
***NOTE:** In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.*

___ Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 - 12117.
***NOTE:** In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue Letter from the Equal Employment Opportunity Commission.*

___ New York State Human Rights Law, N.Y. Exec. Law §§ 290 to 297 (age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic chacteristics, marital status).

___ New York City Human Rights Law, N.Y. City Admin. Code §§ 8-101 to 131 (actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, alienage, citizenship status).

I. Parties in this complaint:

A. List your name, address and telephone number. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff
Name ERIC FABIAN
Street Address 29 PARK AVE #3
County, City WHITE PLAINS
State & Zip Code NY 10603
Telephone Number 347-240-5674

B. List all defendants' names and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant
Name CVS LLC
Street Address 1 CVS DRIVE
County, City WOONSOCKET
State & Zip Code RI 02895
Telephone Number 800 864 2163

C. The address at which I sought employment or was employed by the defendant(s) is:

Employer CVS CAREMARK
Street Address 24 MAMARONECK AVENUE
County, City WHITE PLAINS
State & Zip Code NEW YORK 10603
Telephone Number ______

II. Statement of Claim:

State as briefly as possible the facts of your case, including relevant dates and events. Describe how you were discriminated against. If you are pursuing claims under other federal or state statutes, you should include facts to support those claims. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. The discriminatory conduct of which I complain in this action includes: *(check only those that apply)*

______ Failure to hire me.

__✓__ Termination of my employment.

______ Failure to promote me.

______ Failure to accommodate my disability.

__✓__ Unequal terms and conditions of my employment.

✓ Retaliation.

✓ Other acts *(specify)*: AGE DISCRIMINATION.

Note: *Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.*

B. It is my best recollection that the alleged discriminatory acts occurred on: 17 NOVEMBER 2011
Date(s)

C. I believe that defendant(s) *(check one)*:

______ is still committing these acts against me.

✓ is not still committing these acts against me.

D. Defendant(s) discriminated against me based on my *(check only those that apply and explain)*:

☑ race ________ ☑ color ________

☐ gender/sex ________ ☐ religion ________

☐ national origin ________

☑ age. My date of birth is 7 DEC. 1960 *(Give your date of birth only if you are asserting a claim of age discrimination.)*

☐ disability or perceived disability, ________ *(specify)*

E. The facts of my case are as follow *(attach additional sheets as necessary)*:

SEE ATTACHED COMPLAINT

Note: *As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, the New York State Division of Human Rights or the New York City Commission on Human Rights.*

III. Exhaustion of Federal Administrative Remedies:

A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding defendant' s alleged discriminatory conduct on: 6 SEPTEMBER 2012 *(Date).*

B. The Equal Employment Opportunity Commission *(check one)*:

______ has not issued a Notice of Right to Sue letter.

✓ issued a Notice of Right to Sue letter, which I received on 2 April 2015 *(Date)*.

Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.

C. Only litigants alleging age discrimination must answer this Question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant' s alleged discriminatory conduct *(check one)*:

✓ 60 days or more have elapsed.

______ less than 60 days have elapsed.

IV. Relief:

WHEREFORE, plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, and costs, as follows: THREE HUNDRED THOUSAND Dollars ($300,000.00) compensatory damages ^ ONE Million Dollars ($1,000,000.00) punitive DAMAGES

(Describe relief sought, including amount of damages, if any, and the basis for such relief.)

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 2 day of July, 2015

Signature of Plaintiff [signature]

Address 29 PARK AVENUE #3
WHITE PLAINS, NY 10603

Telephone Number 347-260-5674

Fax Number *(if you have one)* ______

THE UNITED STATES COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION

I Eric Fabian, (Plaintiff) Formally files a complaint with the United States District Court For The Southern District Of New York, White Plains Division against CVS CAREMARK LLC in Violation 42 U.S.C. Section 2000-e Title VII Of The Civil Rights act of 1964, 29 U.S.C. Section 623-4 Age Discrimination Act Of 1967, and 42 U.S.C. 12203-a Prohibition Against Retaliation.

FACTS

I (Eric Fabian) was employed with CVS CAREMARK LLC as a Market Loss Prevention Investigator starting on February 28, 2011 through August 23, 2012. Beginning November 17, 2011 through August 23, 2012 I had been harassed, berated by my immediate supervisor unprofessionally in the front of customers, and other employees, unprofessionally called out of my name, and not being treated equally as my peers, I have been wrongfully disciplined, written up on false statements written by my immediate supervisor based on my race, skin color, and age. I also have been retaliated against because I made a formal complaint to the Human Resources Business Partner for bringing this violation to his attention, and requesting immediate relief. I was wrongfully terminated while out on short term disability by phone call at my place of residence by the Human Resources Business Partner based on false allegations.

On February 28, 2011, I Eric Fabian, (a 51 year old African American Male) was hired by CVS CAREMARK LLC as a Market Loss Prevention Investigator for Multi Unit Stores. My responsibilities were to create initiatives surrounding theft, fraud, safety, and operational accountability of the stores. I was accountable for all shrink accountability process. I detect, and apprehend Shoplifters, I worked with Regional Loss Prevention Managers, and Organized Retail Theft Managers on Organized Retail theft investigations. I complete incident, and investigative reports. I compile investigative reports in preparation for all court appearances, and I maintain the highest degree of integrity, confidentiality, and professionalism at all times. I was also the Liaison between Local law Enforcement, CVS CAREMARK LLC, and the Legal Community.

Beginning November 17, 2011 to August 23, 2012, I was falsely accused of falsifying time and not being at my Location of work by Store Manager Louis Acosta, who is not in my chain of command, nor do I report to him. This Store Manager (Louis Acosta) did not know my work schedule; neither did he know what locations during the day where I report to work. This Store Manager (Louis Acosta) is well known for not being truthful, and is constantly in the center of controversy. Because of this, I was investigated by my former immediate supervisor, Regional Loss Prevention Manager Matthew Woolley, and as a result, based on Louis Acosta's false accusations, I was wrongfully given a written counseling by my former immediate supervisor Regional Loss Prevention Manager

Matthew Woolley. I responded in writing in regards to the counseling statement typed by my former immediate supervisor, Regional Loss Prevention Manager Matthew Woolley, and gave my rebuttal response to my new immediate supervisor, Regional Loss Prevention Manager Nicholas J. Guttman.

On January 3, 2012 I had a meeting with Nicholas J. Guttman who stated to me after reading my response to the written counseling statement, that as far as he is concerned, it is water under the bridge. I asked Nicholas Guttman since he stated it was water under the bridge, will he rescind the typed written counseling? Nicholas Guttman stated no, and I responded by asking him to put my rebuttal to the counseling statement in my personnel file, and give all of the documents to the Human Resources Business Partner, James Iscaro for further review, and his disposition. Nicholas J. Guttman never gave my rebuttal response to the Human Resources Business Partner for review.

On January 10, 2012 I was notified in strict confidence by several managers that Nicholas J. Guttman is out to fire me. That he had been asking them the times I report in to their location, and the times I leave their location. At least on one occasion, Nicholas J. Guttman contacted me late in the evening on my personal mobile phone asking where I was, and stating that I was quiet today. I immediately became suspicious because Nicholas J. Guttman has never contacted me before to speak on such small or frivolous talk or on any type of a friendly conversation.

I was later informed through store management that Nicholas J. Guttman was in the adjacent parking lot watching me to see what I was doing. They (management personnel) further asked me what I have I done to this man for him to be targeting me? My response was that I did not know. However; I have not done anything wrong, and they can investigate me as long as they want, and the end, they will find absolutely nothing that I have done wrong.

On February, 20, 2012 I was advised again by two managers that this store manager, (Louis Acosta) who is always in the center of controversy, called their location wanting to know was I there, and if not, do they know where I am? The two managers stated that they both told Louis Acosta that they don't have time to track me, nor do I report to them. In addition, stop calling their location asking for me (Market Loss Prevention Investigator Eric Fabian) of my whereabouts, because I (Market Loss Prevention Investigator Eric Fabian) do not report to them, and they are very busy with customers.

Minutes later, my immediate supervisor, Regional Loss Prevention Manager Nicholas J. Guttman called the same store location asking members of management why did they not cooperate with Louis Acosta in answering his questions? The two managers reiterated to me that they don't know why Regional Los Prevention Manager Nichols J. Guttman is doing these things to me, because when I am at their location, I am always doing my job, and they don't have any problems whatsoever with me. However; I need to ask, and find out what is the problem.

On February 21, 2012 at approximately 11:00 am, I was at store location #4745 located at

24 Mamaroneck Avenue White Plains, New York 10603 Louis Acosta is the Store Manager. There, I received a call from Nicholas J. Guttman to meet him at store location #1770 located at 325 Mamaroneck Avenue White Plains, New York 10605.

Upon my arrival, I met with Nicholas Guttman who pulled out a written counseling statement which after reading it, suggested that I was not working my schedule, and I am not reporting to work on time or clocking in as noted on my schedule.

I responded by stating that I am given the responsibility to write my own schedule, and notify you of same. In addition, I stated that I do not have the authority to clock in out of the system on my own without the assistance of management. I explain to him that I have to be over –ridden into the system by a manager who is on duty at the time. I further explained that those managers are busy, and that they do not have time to abruptly stop what they are doing (helping customers and signing in vendors) to come, and override me at an exact time.

I stated to him that I am always at work on time. Most of the time, I am 45 minutes to one hour early. Nicholas J. Guttman stated that he does not know what to tell me but I need to clock in, and out exactly on time, and leave exactly on time. Reluctantly, I signed the counseling statement, advised him that I will be writing a rebuttal, and that he was not accurate in this counseling statement.

On or about March, of 2012 a female associate approached me with a complaint of sexual harassment against Store Manager Louis Acosta. This female associate affirms, stating that Louis Acosta inappropriately touched her while she was working inside the Pharmacy. When she rejected his sexual advances, he walked around the store telling other associates that she had a chip on her shoulders. This associate stated that in addition to the unwanted touching by Louis Acosta, and after she rejected his sexual advances, Louis Acosta retaliated against her by maliciously editing her time sheet, shorting her several hours of time that she actually worked, and not paying her for it.

I conducted a preliminary investigation in regards to the female complaint. Information obtained from the Store Assistant Manager disclosed that Louis Acosta without his expressed permission used his user ID and Password to illegally edit this female associate's time. When inquired to Louis Acosta about shorting her time, Louis Acosta stated that the District Field Manager, Roger Perez cut the labor hours of the store, and he could not go over his store allotted payroll hours, or else he would be written up. Three managers just two to three weeks prior to Louis Acosta's gross misconduct were terminated for committing this offense.

After compiling all of this information, I formally sent this investigative report to Regional Loss Prevention Manager Nicholas J. Guttman for further investigation. At the completion of this investigation, District Field Manager Roger Perez along with Regional

Loss Prevention Manager Nicholas Guttman interviewed Louis Acosta, and at the conclusion of this interview, Louis Acosta tendered his two week resignation for the sustained gross misconduct of the aforementioned company violations.

Louis Acosta then approached me, (Market Loss Prevention Investigator Eric Fabian) stating that he was sorry for telling those lies on me to Regional Loss Prevention Manager Matt Woolley, and Regional Loss Prevention Manager Nicholas Guttman. The very next day, a manager approached me, and informed me that after Louis Acosta tendered his resignation, Regional Loss Prevention Manager Nicholas J. Guttman told Louis Acosta:

"WHY CAN'T YOU KEEP YOUR BIG MOUTH SHUT? YOU JUST WONT BE QUIET! NOW ERIC KNOWS THAT I AM OUT TO GET HIM, AND I CAN'T DO ANYTHING NOW BECAUSE HE CAN FILE A LAW SUIT ON US OVER THIS "ENTIRE ORDEAL".

It should be noted that these substantial violations that Louis Acosta committed constitute gross misconduct, and these violations warranted termination. Louis Acosta was given the opportunity to resign, and when he did tender his resignation, management rescinded the resignation, and allowed Louis Acosta to remain on the job at his current position. In addition, to the sexual harassment complaint, the female associate who was victim to the complaint notified the CVS Caremark confidential hot line and made the complaint as well. Louis Acosta informed me (Market Investigator Eric Fabian) that he knows that this female associate made a call to the CVS Caremark Confidential hotline to make the complaint against him, because District Field Manager Roger Perez told him she made the complaint, that he downed played the complaint, and stated to him not to touch her again. Louis Acosta chuckled, and I walked away out of disgust.

On March 21, 2012 at approximately 11:00 am, Nicholas Guttman called me stating that I can not be reimbursed mileage for travel between stores starting from my base store. I responded stating that I have never encountered a problem getting reimbursed for mileage from my base store. Not at least until he became my supervisor. Nicolas Guttman asked me to standby the phone, that he will contact me in a few minutes. Approximately 25 minutes later, I received a call from Nicholas Guttman.

Nicholas Guttman stated that we do not reimburse for mileage from my base store. I stated that company policy states otherwise, and that I have never had a problem getting reimbursed for my travel from my base store for official duties for CVS CAREMARK. He (Nicholas J. Guttman) stated that well you can't be reimbursed. I then informed him (Nicholas Guttman) that I am not in the business of spending my hard earned money to CVS CAREMARK for their official duties, and not be reimbursed.

His (Nicholas J. Guttman) response was **"Well I don't know what else to tell you"!** I then stated that I will think about what I am going to do, and will let him know on March 24, 2012. On March 23, 2012 at approximately 10:30 am, Nicholas J. Guttman contacted me at my residence, on my regular day off, asking me have I thought about what I was going to do. (Nicholas J. Guttman thought that I was going to resign) I responded by stating that I was still thinking about it.

On March 23, 2012 I called Human Resources Business Partner John Iscaro to inform him of my complaint, and to gain resolution to these overall problems that I am having out of Nicholas Guttman. Mr Iscaro was not available, and the voice mail stated that he would not be back in the office until Monday March 26, 2012. Because Mr. Iscaro was not available, I called CVS CAREMARK Corporate office, and spoke with Human Resources Representatives.

I informed them of the on going problems of reimbursement that I am having with Nicholas Guttman. They responded stating that I am entitled to the reimbursement, and that I should follow up on Monday March 26, 2012 with Human Resources Business Partner Mr. John Iscaro.

On March 29, 2012 while working at one of the store locations, I was called by Nicholas Guttman who requested that I remained at my location until he arrives there. Upon arrival, he (Nicholas Guttman) summoned me in the office. Upon entering the office, we briefly spoke about the reimbursement where it was understood that I will be reimbursed for all travels from my based store retroactive, and going forward.

He then moved on to another subject telling me that he was sitting outside of one of the stores on a Monday night observing me, and that he wanted to know why I was standing at the door. I informed him that there was merchandise sitting in the parking lot, and I was asked by management would I watch the merchandise to make sure no one steals anything from there as they were unloading merchandise off the truck, and that I was doing that as a favor for the management team.

He then told me my job was not supposed to watch merchandise sitting on the parking lot, that if they needed someone, they would have hired a security guard. He also said that I was large, and that **"YOU LOOK LIKE A BOUNCER"** from the way I was dressed. (My attire for the evening was a black and white pin striped collared shirt, black dress slacks, and leather dress shoes spit shined to a high gloss)

I left the office, and headed to another location, and upon arrival, I began to contact other Investigators who reported to Nicholas Guttman. I asked them all current, and past Investigators has Nicholas Guttman ever questioned them, counseled them verbally or written about their schedule? They all stated no. They all stated that Nicholas Guttman has never bothered them about their schedule.

Even one Market Investigator responded by saying: **"Nick is cool as long as you are producing, Nick will not bother you".** They stated that they clock in early, leave early, and they clock in late, leave late. That as long as they are producing theft cases Nick will not bother you.

I also asked these Investigators, (who are not of ethnic color) does Nicholas Guttman call the stores, and ask whether or not they are there, or what time do they arrive to work, and what time do they leave work. They stated that Nicholas Guttman does not call checking on them at all.

On April 7, 2012 I began getting reports from managers and other associates that store manager Louis Acosta, the people who have been making the false statements to Nicholas Guttman about me of falsifying time, has now been informing them that Nicholas Guttman is out to terminate me. Several Investigators from Rhode Island, Connecticut, and in Westchester County, New York was told the same exact thing by Louis Acosta, and they all informed the same to me. I confronted Nicholas Guttman about, this and he denied the accusations. However; his actions displayed differently as he continued to harass me. Investigators wrote statements affirming that Louis Acosta made that statement to them.

On April 9, 2012 I was at store location #0911 located at 452 Mamaroneck Avenue White Plains, New York 10605. As I was leaving for the evening walking home, I observed a vehicle idling on an adjacent parking lot. This vehicle matched the description of company vehicles that CVS Senior level Management operate. While walking home, I observe this vehicle exit the parking lot, and began following behind me in my direction Northbound on Mamaroneck Avenue White Plains Westchester County, New York. As it got closer, I continued to walk pass my residence to get to a well lighted area, and to get a visual of the person driving.

As this vehicle passed by, I observed a Caucasian Male whom I believe to be fitting the description, of my immediate supervisor Nicholas J. Guttman, operating a Chevrolet Malibu. **(CVS CAREMARK MOTOR POOL OF COMPANY VEHICLES)** When he was close to me, he accelerated, and continued down the street.

On May 16, 2012 I was called at the location where I was working by Nicholas J. Guttman, and was directed to report to store #4745 located at 24 Mamaroneck Avenue White Plains, New York 10603 to meet with him to sign some company policy documents.

Upon my arrival, I met with Nicholas Guttman, who also had the District Field Manager, Roger Perez present as well. After signing said documents, Nicholas J. Guttman began questioning me about my productivity (arrest cases). He (Nicholas J. Guttman) stated to me that my productivity was low, and was wondering why? I responded by stating that there were no criminal activity (external-internal thefts) that could be identified, and / or made.

He then stated that well the stores are losing money. I began explaining that the previous year, I made a huge positive impact, in the stores in my District. That year 2011 I was ranked number two in this entire region on ROI (Return On Investments) The only Investigator that was ahead of me was an Investigator from Boston, Massachusetts. I stated that this Investigator had recovered, only seven dollars more than I. I also explained to him that he, (Nicholas J. Guttman) was not here in this District to know anything about the positive impact that I had made.

I also explained that it was I whom disclosed the padding of inventory of the very same store #4745 location they are speaking of. That this went on for years even before I was hired by CVS, yet it was I who found the problem. I further stated that all of the stores that I was focusing on should make their budget, and if not, it is not my fault. That I have eradicated mostly all major theft in the problem stores in my District internally, and externally.

At that time, I ask Nicholas Guttman why he was harassing me. I also asked did he want to me to resign. The District Field Manager Roger Perez then interjected stating "Well if you want to quit, let's get together two weeks from now, and we could have another conversation to transition me out." I responded stating that "I never said I was going to quit". That he (District Field Manager Roger Perez) stated that if I wanted to resign. Lets get together in two weeks, and have a conversation between the three of us, and we can revisit it at that time. Nicholas Guttman then stated that I told you few weeks ago that **"You are not a good fit for us"!** I asked him what you mean by that statement.

He (Nicholas Guttman) stated maybe you could be a door greeter. He went on to say, you are a former Police Officer, your size, and your personality. You could be great standing at the front door greeting people as they enter, and leave.

(It should also be noted that Nicholas J. Guttman had hired a new Market Loss Prevention Investigator who was Non African American to replace me. The new Market Loss Prevention Investigator informed me that he had no idea that I was assigned to the District that I presently work in. That Nicholas J. Guttman was explaining to him about the position he was hired for as if he was going to be the only Market Loss Prevention Investigator in that District.)

I then stated to Nicholas J. Guttman that I have a Masters Degree, and that I was not hired to be a door greeter. I informed him that I was hired as a Market Loss Prevention Investigator of Multi Unit Stores. I also stated that I will continue to be in the position that I was currently hired for until such time, I decide whether or not I wish to remain in that position, or if I accept a new position, be promoted, or otherwise wish to resign on my very own. I further stated that if they do not have anything beneficial to say to me, I am leaving. At that time, I left the store.

On May 18, 2012 I contacted the Human Resources Office to speak with Human Resources Business Partner John Iscaro. I informed him of the aforementioned serious problems that I am having with Regional Loss Prevention Manager Nicholas J. Guttman.

I requested a conference with him, Nicholas J Guttman, District Field Manager Roger Perez, and myself to bring to the fore-front these issues, that I could gain resolution. John Iscaro contacted me, and left a voice message stating that he is free on Monday May 21, 2012 at 3:00 pm. He will contact Nicholas J. Guttman to be there.

On May 21, 2012 at 3:00 pm I responded to the Regional Business Office. Upon my arrival, I was met by the Human Resources Business Partner John Iscaro who escorted me to the conference room. Human Resources Business Partner John Iscaro was present, Regional Loss Prevention Manager Nicholas J. Guttman, and I was present. District Field Manager Roger Perez was a no-show. At that time; I presented John Iscaro all of the facts about the aforementioned problems as stated in this Official Complaint.

After all of the problems were brought out, John Iscaro agreed with me on all of my issues, and exonerated me on all of the written counseling statements, stating **"These counseling statements are a non-issue".** John Iscaro then asked me to explain how I feel that I am being discriminated against. I responded by stating that Nicholas J. Guttman has continued relentlessly treating me unfair as compared to the other Investigators and other employees there at CVS that are Non African American.

I explained to John Isacaro that I contacted the other investigators whom work / worked under Nicholas Guttman's authority, who stated that Nicholas J. Guttman has never done to them the things he has done to me. That Nicholas J. Guttman called me names unprofessionally. I also spoke on the topic of my annual raise. I stated that my anniversary date have arrived, and have long past. I contacted Nicholas Guttman and informed him of my raise in which he ignored my request for evaluation, when my peers have gotten their raises in timely manner. I pointed out the investigation into Louis Acosta of his gross misconduct, and yet he was not terminated. I also stated that had it been me, I would have been terminated immediately.

I reiterated stating that three months has past, and I have yet to have my evaluation reviewed or my performance of 2011, and to get my pay increased. Yet other Non African Associates have received their pay increases whose anniversary date preceded mine. I mentioned to John Iscaro about the stalking incident that Nicholas Guttman committed towards me. John Iscaro asked me what I wanted out of this. I stated to John Iscaro that I want my pay increase, to be left alone, and to be treated with the dignity, and respect that I so much deserve, and as my peers. That concluded the meeting with no promises or resolution being made on all of the complaints that I brought up to John Iscaro, Human Resources Business Partner.

On June 5, 2012 I was working at store CVS #0911 located at 452 Mamaroneck Avenue White Plains, New York 10605. I was taking a fifteen break, and sitting near the pharmacy when Nicholas J. Guttman entered the store with a new Market Loss Prevention Investigator whom he hired, and was in training.

I was advised by a manager, and other associates that Nicholas J. Guttman was sneaking around the store aisles looking for me, trying to catch me doing something wrong. While sitting down, on my break, Nicholas J. Guttman approached me from around the corner trying to catch me doing something wrong. When results were negative, he then introduced me to the new Market Loss Prevention Investigator (Whom I had already met). At that time, I stood up from where I sitting, and began talking to the Market Investigator, and showing him around store.

While speaking with this new Market Loss Prevention Investigator, he informed me that he feels very uncomfortable here in this District, and that Nicholas Guttman never informed him that there was another Market Loss Prevention Investigator assigned to this District. Not only did he say this but other Market Investigators informed me of this as well, that they do not like coming to District Six Located in Westchester County, New York that this District make them feel very uncomfortable as to the things that goes on there.

Because of what was currently going on, (Discrimination) It was also brought to my attention by a Market Investigator that on this same day (June 5, 2012) that Regional Loss Prevention Manager was in my District less than one mile from my location where I was working, and had taken this new Market Loss Prevention Investigator to lunch. That Nicholas J. Guttman stated: **"Oh! Eric is working near here"! Don't tell Eric that I am taking you to lunch"!** This lunch was paid for by company funds.

On June 6, 2012 I contacted Nicholas J Guttman, and reminded him that my February 2011 evaluation for my raise had passed, and I wanted to know when I will be evaluated. Nicholas Guttman stated that he and my former supervisor will get together and conduct my evaluation with me. As of my date of separation from CVS CAREMARK LLC, I was never evaluated for my annual raise, as my peers at CVS who has gotten their raises in a timely manner.

On June 12, 2012 I spoke with the CVS Caremark EAP Counselor Melissa Slegona (Employee Assistance Program). I had informed her as to all of the discriminatory practices that was currently occurring with me. I also informed her that I have been going through these issues for seven months, in which I brought to the attention of the Human Resources Business Partner John Iscaro, and yet these egregious discriminatory behaviors have not stopped. I informed her that because of these abominable acts, I am very much stressed here, and that in my 30 plus years in the work place, I have never encountered anything like this. She was shocked, and set up an appointment to see a psychologist.

On June 13, 2012 at 5:15 pm I was returning to my work location from my lunch break when a text was sent to my personal cell phone by Nicholas Guttman. Nicholas Guttman asked where I was, at which time I responded by text that I was returning back my work location from my lunch break. When I arrived at the store location where I was working, Nicholas Guttman was standing behind the front checkout counter.

I approached Nicholas Guttman to ascertain what he needed. At that time, Nicholas Guttman openly began berating me, and falsely accusing me of not clocking out for lunch, while in front of associates, and customers who were checking out, paying for their items. I stated that I did clock out for lunch; he continued berating me, and falsely accusing me of not clocking out for lunch. I then requested him (Nicholas Guttman) to accompany me to the manager's office to further discuss this issue.

Once in the office, I told Nicholas Guttman the time I started work, my location where I started work, the times I took my two fifteen minute breaks, the time I responded to my next location for work, and the times I clocked out for lunch. Nicholas said he looked into the system and did not see me clocking in any where. I told him that I did, and again informed him of the times that I clocked in and the locations where I was. He again stated that he did not see me clock in any where.

I responded by stating, well I don't know what to say or tell you because I did. Nicholas Guttman then asked me why did I not tell the store manager that I was going to lunch, and I answered by saying that I don't have to tell a store manager anything about when I come and go. That a store manager is not in my chain of command, and again, I don't have to tell them anything. I further stated to Nicholas Guttman that I only report to him. Not any store managers.

Nicholas then let out a sigh, and then stated to me why am I looking at him upset? I stated that I was upset at him because I am tired of him harassing me, and discriminating against me. I stated that I thought that after out meeting with John Iscaro, things would get better. But I can see that it has not. I told him (Nicholas Guttman) that I am tired of him, and I wanted these egregious acts to stop, and stop now. Nicholas Guttman then directed me to clock out, and go home. I left the office where we were talking, walked over to the clock, had a manager over-ride me in the system, and clocked out.

At approximately 5:30 pm I arrived at my place of residence extremely upset. I called Human Resources Business Partner John Iscaro, and left a message as to what occurred, and request him to contact me at his earliest convenience. I then contacted the Employee Assistance Program and spoke with a counselor Melissa Slegona, and informed her as to what had just occurred. Melissa Slegona advised me to contact CVS Human Relations Department and speak with Linda Knight. After speaking Melissa Slegona, I immediately called Linda Knight, and left a message to contact me at her earliest convenience.

On June 14, 2012 at approximately 9:00 AM Linda Knight contacted me. I informed of all of the problems that has occurred up to date. I also informed her that I called out sick on this day due to the severe stress, and emotional trauma that I was experiencing due to the gross misconduct of my immediate supervisor, Regional Loss Prevention Manager Nicholas J. Guttman, beginning January 2012 to date. After explaining all that has occurred, Linda. Knight's response was "WHOA"!!! Ms. Knight stated that she has escalated my complaint as a top priority to Field Management for a through investigation.

From June 14, 2012 until August 8, 2012 I have had only one contact with CVS Personnel, and that was with Ms. Linda Knight when she contacted me sometime in July 2012 asking to see how I was doing health wise. I spoke with Ms. Knight for a few minutes explaining to her what this entire ordeal of discrimination, harassment, retaliation, and because I brought this to the attention of the Human Resources Business Partner for resolution, again Nicholas J Guttman retaliated against me making me clock out early on June 13, 2012. After explaining the magnitude that this has caused to me health wise, I began to get upset again. Ms Knight **stated "Okay Eric, I was just checking on you to see how you were doing." Let me know when you are ready to come back to work".** I then asked Ms. Knight what was the status of the Investigation, and she stated that it was still ongoing.

During that time out on short term disability, (June 13, 2012 to August 23, 2012) I was under the care of a psychologist, and a psychiatrist whom also had to prescribe me medication to help with the mental trauma, and severe stress due to discrimination, harassment, retaliation that was done to me. I was forced to return back to work due to my short term disability payments were not being paid to me by CVS Insurance, whom I pay a premium to bi weekly to.

On August 10, 2012 I contacted Linda Knight (CVS Human Relations) to advise her that I wanted to return to work. Ms. Knight in return contacted Human Resources Business Partner John Iscaro and the three of us spoke via three – way calling system. John Iscaro informed me that it would be no problem for me to return to work as long as I have a signed released from my physician whom was treating me, to release me back to duty. Ms. Knight stated to me that after submitting the release to Human Resources Business Partner John Iscaro that she would call me on Tuesday August 14, 2012 late evening with a transition plan for me to return to work.

On Monday August 13, 2012 I faxed to John Iscaro (Human Resources Business Partner) the signed release form as requested. I followed up with an email to both John Iscaro, and Linda Knight informing both of them that per our telephone discussion on Friday August 10, 2012 I have faxed the release form to John Iscaro, and I look forward to hearing from them informing me of a definitive date transitioning me back to work.

On Tuesday August 14, 2012 I never received a call from Linda Knight nor John Iscaro. There were also no calls from either of the two on neither August 15, 2012 nor August 16, 2012. On August 17, 2012 I attempted to contact John Iscaro. No one was available in John Iscaro's office and as a result, I left a message as to the reason I was calling him, at which time I asked him to contact me. I then called Linda Knight, and spoke with her. I asked Linda Knight why haven't she contacted me as promised. Linda knight stated that John Iscaro, and her had been in talks, and that at this time, she don't know when she will be able to send me back to work. Linda knight then stated that it could be the following week or the next two weeks, but she did not know.

I then ask Linda Knight what does she mean sending me back in the next two weeks, that our conversation on August 10, 2012 she stated that she will give me a call late Tuesday evening giving me a definitive date as to when I will be transitioned back to work. I then asked her one week, two weeks, thirty days, six months. Linda Knight stated not six months, but she doesn't know. Linda reiterates that John Iscaro, and her are still in talks about it. Linda Knight stated that she will give me a call on Monday August 20, 2012 and if I don't hear from her, to call john Iscaro for an update.

On Monday August 20, 2012 I never received a call from Linda Knight, and as directed by Linda knight, I called John Iscaro's office to ascertain a definitive date of myself returning to work. Again, no one answered, and I left a voice message stating the reason for my call, and to contact me for a definitive date that I can be transitioned back into work.

Neither Tuesday August 21, 2012 nor August 22, 2012 did any one from either office (John Iscaro or Linda Knight) contact me in regards to giving me a definitive date for me to return back to work.

On Wednesday August 22, 2012 I received a letter from CVS Caremark stating that I was suppose to return to work. That I have fifteen days from the date of that letter (August 16, 2012) to return back to work and failure to do so will result in termination.

At approximately 3:30 pm on August 22, 2012 I contacted Corporate Headquarters, and spoke with representative "Nish" from Human Resources. I informed them that I had received the aforestated letter, and I read the letter to them. I stated that since August 10, 2012 I had spoken with Employee Relations Representative Linda Knight, and with Human Resources Business Partner John Iscaro requesting to return to work.

I explained to them the sequence of events in chronological order up to this date in its entirety, (August 22, 2012) yet no one contacted me with a definitive date of returning back to work. I added that since I had been with CVS, I had done everything that I was suppose to do pursuant to CVS policy, and guidelines in regards to me being out on short term disability, and returning back to work.

I stated that I am tired of contacting Linda Knight, and John Iscaro asking for a definitive date for me to return to work. I further stated that CVS Human Resources, and Employee Relations has failed miserably in all aspects of my complaint of discrimination, my complaint of disability in which I was not compensated for my time off, and bringing resolution to this matter. In addition, I stated that CVS Management has been defiant, and very deceptive in all aspects of me returning to work and addressing my complaint of discrimination, harassment, and retaliation in bringing resolution to this on going problem.

Corporate Human Resources Representative Nish; then gave me the number to JoAnn Borden, CVS Human Resources Director to contact. I informed Nish that I will give John Iscaro the opportunity to contact me today, and if he doesn't, I will contact JoAnn Borden on August 23, 2012. Approximate thirty minutes later after speaking with Nish; I received a call from the office of John Iscaro, Human Resources Business Partner. It was the Administrative Assistant who stated to me that John Iscaro had sent her an email stating that he was in a meeting, and he would contact me on August 23, 2012.

On August 23, 2012 at 12:27 pm I received a call from John Iscaro at my residence. John Iscaro informed me that he had Human Resources Director JoAnn Borden on the phone on conference call. John Iscaro stated that he had been in talks about me returning back to work, and he came up with this decision.

He (John Iscaro) stated that in July 2012 (no specific date) I told him that I wanted to snap Nicholas Guttman's neck. At that time I interjected stating that, what he is saying if false. That I never spoke with him in the month of July 2012 or any date From June 13, 2012 to August 10, 2012. In addition, I never made such statement at all to him about anyone especially Nicholas J. Guttman.

He, (John Iscaro) stated that it is against company policy to threaten an employee, and that CVS takes these things very seriously. Because of that, he was going to have to let me go, and that the decision has made. At that time, JoAnn Borden stated that they want to do something for me to help me during my time without a job. She (JoAnn Borden stated the following:

***I can immediately apply for Unemployment Insurance, and CVS will not challenge me on receiving unemployment. That it will be between New York State Department of Labor and myself as to me receiving unemployment insurance.**

***CVS is giving me a severance package of eight weeks of pay plus any unused vacation (two weeks) for a total of ten weeks of pay. That if I elect to, I may receive my current medical, vision, and dental at my current cost and CVS Caremark will pay for the other part as any current employee of CVS Caremark.**

*** That immediate after separation date, I may elect to continue employee's medical (Including medical prescription), dental, and / or vision insurance pursuant to COBRA. CVS Caremark shall subsidize such coverage by paying health insurance provider an amount equal to the current company contribution for active employees for coverage until severance end date or the date on which employee becomes eligible for health care coverage from another employer, whichever is earlier.**

***CVS Caremark will place me with a Career Counseling Team that will assist with my resume, and transition me to another place of employment out side of CVS Caremark.**

***CVS Caremark will enclose a liability waiver for me to sign that if agreed between CVS Caremark and myself, I must sign this waiver releasing CVS Caremark LLC of any liabilities, and I will not bring any type of legal actions or bring any law suit against CVS Caremark.**

JoAnn Borden stated that this packet will be shipped to my residence over night for me to read all of this agreement, sign, and mail back to the CVS Caremark Corporate Office.

JoAnn Borden further stated that I have 21 days from date of receipt of this agreement to make a decision as to my intentions and that I can have an attorney look at the severance agreement. That was the end of the conversation.

THESE ARE THE FACTS OF MY COMPLAINT AGAINST CVS CAREMARK LLC HUMAN RESOURCES BUSINESS PARTNER JOHN ISCARO AND REGIONAL LOSS PREVENTION MANAGER NICHOLAS J. GUTTMAN FOR RACIAL DISCRIMINATION HARRASSMENT AND RETALIATION

1. **On December 21, 2011 I was wrongfully counseled on the false allegations of reliability, and attendance. On the counseling statement at the bottom of the form was that of Store Manager Louis Acosta's typed signature, which again, is not in my chain of command, neither do I report to him. My immediate supervisor's signature was no where on the written counseling statement.**

2. **On January 3, 2012 I met with Nicholas J. Guttman who pulled out a written counseling statement which after reading it, suggested that I was not working my schedule, and I am not reporting to work on time or clocking in as noted on my schedule. Other Market Loss Prevention Investigator who is Non African American was not written up for not working their exact schedule, and not clocking in and out as noted on their schedule.**

3. **On or about March 2012 I conducted a preliminary investigation in regards to the female complaint. Information obtained from the Store Assistant Manager disclosed that Louis Acosta without his expressed permission used his user ID and Password to illegally edit this female associate's time. After compiling all of this information, I formally sent this investigative report to Regional Loss Prevention Manager Nicholas J. Guttman for further investigation. At the completion of this investigation, District Field Manager Roger Perez along with Regional Loss Prevention Manager Nicholas Guttman interviewed Louis Acosta, and at the conclusion of this interview, Louis Acosta tendered his two week resignation. Louis Acosta then approached me, (Market Loss Prevention Investigator Eric Fabian) stating that he was sorry for telling those lies on me to Regional Loss Prevention Manager Matt Woolley, and Regional Loss Prevention Manager Nicholas Guttman. The very next day, a manager approached me, and informed me that after Louis Acosta tendered his resignation, Regional Loss Prevention Manager Nicholas J. Guttman told Louis Acosta "WHY CAN'T YOU KEEP YOUR BIG MOUTH SHUT? YOU JUST WONT BE QUIET! NOW ERIC KNOWS THAT I AM OUT TO GET HIM, AND I CAN'T DO ANYTHING NOW BECAUSE HE CAN FILE A LAW SUIT ON US OVER THIS ENTIRE ORDEAL!"**

   It should be noted that these substantial violations that Louis Acosta committed constitute gross misconduct, and these violations warranted

termination. Louis Acosta was given the opportunity to resign, and when he did tender his resignation, District Field Manager Roger Perez (Louis Acosta's immediate Supervisor) rescinded the resignation, and allowed Louis Acosta to remain on the job at his current position. Yet, I am being written up on false allegations for falsifying time by Louis Acosta. But he committed gross misconduct, he was allowed to tender his two week resignation, then later his resignation was rescinded. Clearly this is bias.

4. **On March 21, 2012 at approximately 11:00 am, Nicholas Guttman called me on my personal cell phone stating that I can not be reimbursed mileage for travel between stores starting from my base store. I responded stating that I have never encountered a problem getting reimbursed for mileage from my base store. Not at least until he became my supervisor. No other Non African American has been denied reimbursement for their mileage from their based store location.**

5. **Nicholas J. Guttman informed me that he I going to write me up again, and this time this will be my final warning. I asked why I was being written up this time. He (Nicholas Guttman) stated that because I am still not following my schedule by not clocking in and out on time. I responded by stating that I know that I have not violated any company policies. He (Nicholas Guttman) stated that I am still clocking in and out late, (five minutes here and three minutes there) and we discussed that previously.**

   I again reminded him that I am always to work on time, and again I do not have the authority to clock in and out of the other store locations, furthermore; I have to wait until a manger at those locations over-ride me in the system to clock me in, and out. Nicholas Guttman stated "Well I don't know what to tell you". He (Nicholas J. Guttman) then stated that I am now in the "Danger Zone"! That the next time we meet over this, he is going to terminate me. At that time, I ask Nicholas J. Guttman why he is harassing me. Why does he want me gone? Mr. Guttman stated "You are not a good fit for us"!

   I asked them all, Non African American Market Investigators current, and past, has Nicholas Guttman ever questioned them, counseled them verbally or written about their schedule? They all stated no. They all stated that Nicholas Guttman has never bothered them about their schedule.

   Even one of the Non African American Market Investigators responded by saying "Nick is cool as long as you you're producing. Nick will not bother you". They stated that they clock in early, leave

early, and they clock in late, and leave late as long as they are producing theft cases. I also asked these Investigators does Nicholas Guttman call the stores and ask whether or not they are there or what time do they arrive to work and what time do they leave work. They stated that Nicholas Guttman does not call the store to check on them at all.

6. **On April 9, 2012 I was at store location #0911 located at 452 Mamaroneck Avenue White Plains, New York 10605. As I was leaving for the evening walking home, I observed a vehicle idling on an adjacent parking lot. This vehicle matched the description of company vehicles that CVS Senior level Management operate. While walking home, I observe this vehicle exit the parking lot, and began following behind me in my direction Northbound on Mamaroneck Avenue White Plains Westchester County, New York. As it got closer, I continued to walk pass my residence to get to a well lighted area to get a visual of the person driving. As this vehicle passed by, I observed a Caucasian Male whom I believe to be fitting the description, that of my immediate supervisor Nicholas J. Guttman operating a Chevrolet Malibu. (CVS CAREMARK MOTOR POOL OF COMPANY VEHICLES) When he was close to me, he accelerated, and continued down the street.**

   On May 16, 2012 I ask Nicholas Guttman why he is harassing me. I also asked did he want to me to resign. The District Field Manager Roger Perez then interjected stating "Well if you want to quit, let's get together two weeks from now, and we could have another conversation to transition me out." I responded stating that "I never said I was going to quit". Nicholas Guttman then stated that I told you a few weeks ago that "You are not a good fit for us"! I then Nicholas J. Guttman: "What you mean by that statement"?

   He (Nicholas Guttman) stated maybe you could be a door greeter. He went on to say, you are a former Police Officer, your size, and your personality. You could be great standing at the front door greeting people as they enter, and leave. There are no such positions at CVS Caremark as a Door Greeter. Nicholas J. Guttman has never asked any other Market Investigators to become a door greeter. This was very offensive as he is directly speaking of my age being 51 years old, and I am the oldest Market Loss Prevention Market Investigator in Westchester County, New York in this Position.

7. **On May 21, 2012 at 3:00 pm I responded to the Regional Business Office. Upon my arrival, I was met by the Human Resources Business Partner John Iscaro who escorted me to the conference room. Human Resources Business Partner John Iscaro was present, Regional Loss Prevention Manager Nicholas J. Guttman, and I was present. District Field Manager Roger Perez was a no-show. At that time; I presented John Iscaro all of the aforementioned problems as stated in this Official Complaint. After all of the problems were brought out, John Iscaro agreed with me on all of my issues,**

and exonerated me on all of the written counseling statements, stating "These counseling statements are a non issue". I explained to John Isacaro that I contacted the other investigators whom work, or had worked under Nicholas Guttman's authority, who stated that Nicholas has never done to them the things he has done to me. That Nicholas J. Guttman called me names unprofessionally. I spoke on the topic of my annual raise. I informed him of my anniversary date and evaluation in which he ignored my request, when my peers have gotten their raises in timely manner. I also pointed out the investigation into Louis Acosta's gross misconduct, and yet he was not terminated. I pointed out that had it been I that was accused of this gross misconduct, I would have been terminated immediately.

I stated that three months has past, and I have yet to have my evaluation reviewed for my performance of 2011, and to get my pay increased yet other Non African Associates have received their pay increases whose anniversary date preceded mine. I mentioned to John Iscaro about the stalking incident that Nicholas Guttman committed against me. John Iscaro asked me what I wanted out of this. I stated to John Iscaro that I want my pay increase, to be left alone, and to be treated with dignity, and the respect that I so much deserve. That concluded the meeting with no promises or resolution being made on all of the complaints that I brought up for resolution.

8. **On June 6, 2012 I contacted Nicholas J Guttman, and reminded him that my February 2011 evaluation for my raise had passed, and I wanted to know when I will be evaluated. Nicholas Guttman stated that he and my former supervisor will get together and conduct my evaluation with me. As of my date of separation from CVS CAREMARK LLC I was never evaluated for my annual raise and my peers at CVS (Non African American) have gotten their raises in a timely manner.**

9. **On June 12, 2012 I spoke with the CVS Caremark EAP Counselor Melissa Slegona (Employee Assistance Program). I had informed her as to all of the discriminatory practices that was currently occurring with me. I also informed her that I have been going through these seven months, which I brought it to the attention of the Human Resources Business Partner John Iscaro, and yet the egregious discriminatory behavior has not stopped. She was shocked, and set up an appointment for me to see a psychologist.**

10. **On June 13, 2012 at 5:15 pm I approached Nicholas Guttman to ascertain what he needed. At that time, Nicholas Guttman began berating me, and falsely accusing me of not clocking out for lunch. This occurred while in front of associates, and customers who were in the check purchasing their items. I stated that I did clock out for lunch; he continued berating me, and falsely accusing me of not clocking out for lunch. I then requested him (Nicholas Guttman) to accompany me to the manager's office to further discuss this issue. Once in the office, I told Nicholas Guttman the time I started work, my**

location where I started work, the times I took my two fifteen minute breaks, the time I responded to my next location for work, and the times I clocked out for lunch. Nicholas said he looked into the system and did not see me clocking in any where. I told him that I did, and again informed him of the times that I clocked in and the locations where I was. He again stated that he did not see me clock in any where. I responded by stating, well I don't know what to say or tell you because I did. Nicholas Guttman then asked me why did I not tell the store manager that I was going to lunch, in which I answered by saying, I don't have to tell a store manager anything about when I come and go. That a store manager is not in my chain of command, and again, I don't have to tell them anything. I further stated to Nicholas Guttman that I only report to him. Not any store managers. Nicholas J. Guttman then let out a sigh, and then stated to me why am I looking at him upset? I stated that I was upset at him because I am tired of him harassing me, and discriminating against me. I stated that I thought that after our meeting with John Iscaro things would get better, but I can see that it has not. I told him (Nicholas Guttman) that I am tired of him, and I wanted these egregious acts to stop, and stop now. Nicholas Guttman then directed me to clock out, and go home. I left the office where we were talking, walked over to the clock, had a manager over-ride me in the system, and clocked out.

11. On August 10, 2012 I contacted Linda Knight (CVS Human Relations) to advise her that I wanted to return to work. Ms. Knight in return contacted Human Resources Business Partner John Iscaro and the three of us spoke via three – way calling system. John Iscaro informed me that it would be no problem for me to return to work as long as I have a signed released from my physician whom was treating me, to release me back to duty. Ms. Knight stated to me that after submitting the release to Human Resources Business Partner John Iscaro that she would call me on Tuesday August 14, 2012 late evening with a transition plan for me to return to work.

12. On Monday August 13, 2012 I faxed to John Iscaro (Human Resources Business Partner) the signed release form as requested. I followed up with an email to both John Iscaro, and Linda Knight informing both of them that per our telephone discussion on Friday August 10, 2012 I have faxed the release form to John Iscaro, and I look forward to hearing from them informing me of a definitive date transitioning me back to work.

13. On Tuesday August 14, 2012 I never received a call from Linda Knight nor John Iscaro. There were no calls from either of the two on neither August 15, 2012 nor August 16, 2012. On August 17, 2012 I attempted to contact John Iscaro. No one was available in John Iscaro's office and as a result, I left a message as to the reason I was calling him, at which time I asked him to contact me. I then called Linda Knight, and spoke with her. I asked Linda Knight why she haven't she contacted me as promised. Linda Knight stated that John Iscaro, and her had been in talks, and that at this time, she don't

know when she will be able to send me back to work. Linda knight then stated that it could be the following week or the next two weeks, but she did not know. I then ask Linda Knight what does she mean sending me back in the next two weeks, that our conversation on August 10, 2012 she stated that she will give me a call late Tuesday evening giving me a definitive date as to when I will be transitioned back to work. I then asked her one week, two weeks, thirty days, six months. Linda Knight stated not six months, but she doesn't know. Linda Knight reiterated that she and John Iscaro were still in talks about it. Linda Knight stated that she will give me a call on Monday August 20, 2012 and if I don't hear from her, to call john Iscaro for an update.

14. On Monday August 20, 2012 I never received a call from Linda Knight, and as directed by Linda knight, I called John Iscaro's office to ascertain a definitive date of myself returning to work. Again, no one answered, as a result, I left a voice message stating the reason for my call, and to contact me for a definitive date that I can be transitioned back into work. Neither Tuesday August 21, 2012 nor August 22, 2012 did any one from either office (John Iscaro or Linda Knight) contact me in regards to giving me a definitive date for me to return back to work.

15. On Wednesday August 22, 2012, I received a letter from CVS Caremark stating that I was supposed to return to work. That I have fifteen days from the letter dated (August 16, 2012) to return back to work and failure to do so will result in termination. At approximately 3:30 pm I contacted Corporate Headquarters, and spoke with representatives from Human Resources. I informed them that I had received the aforestated letter, and I read the letter to them. I stated that since August 10, 2012 I had spoken with Employee Relations Representative Linda Knight, and with Human Resources Business Partner John Iscaro requesting to return to work.

16. I stated to Corporate Human Resources Representative Nish; that I am tired of contacting Linda Knight, and John Iscaro asking for a definitive date for me to return to work. I further stated that CVS Human Resources, and Employee Relations has failed miserably in all aspects of my complaint of discrimination, harassment, retaliation, and my complaint of disability in which I was not compensated for my time off, and bringing resolution to this matter. In addition, I stated that CVS Management has been defiant, and very deceptive in all aspects of me returning to work, in addition to addressing my complaint of discrimination, harassment, retaliation, and to bring resolution to this on going problem.

16. Corporate Human Resources Representative Nish; then gave me the number to JoAnn Borden, CVS Human Resources Director to contact. I informed Nish that I will give John Iscaro the opportunity to contact me today, and if

he doesn't, I will contact JoAnn Borden on August 23, 2012. Approximately thirty minutes later after speaking with Nish; I received a call from the office of John Iscaro, Human Resources Business Partner. It was the Assistant who stated to me that John Iscaro had sent her an email stating that he was in a meeting, and he would contact me on August 23, 2012.

17. **August 23, 2012 at 12:27 pm I received a call from John Iscaro at my residence. John Iscaro informed me that he had Human Resources Director JoAnn Borden on the phone on conference call. John Iscaro stated that he had been in talks about me returning back to work and he came up with this decision. John Iscaro stated that in July 2012 (no specific date) I told him that I wanted to snap Nicholas Guttman's neck. At that time I interjected stating that, what he is saying if false. That I never spoke with him in the month of July 2012 or any date From June 13, 2012 to August 10, 2012. In addition, I never made such statement at all to him about anyone, this includes Nicholas J. Guttman, and again what he just stated to me was a false statement.**

18. **John Iscaro went on to say that it is against company policy to threaten an employee and that CVS takes these things very seriously. Because of that, he was going to have to let me go, and that the decision has been made. At that time, JoAnn Borden stated that they want to do something for me to help me during my time without a job.**

19. **Human Resources Director JoAnn Borden stated the following:**

- **I can immediately apply for Unemployment Insurance, and CVS will not challenge me on receiving unemployment. That it will be between New York State Department of Labor and myself as to me receiving unemployment insurance.**

- **CVS is giving me a severance package of eight weeks of pay plus any unused vacation (two weeks) for a total of ten weeks of pay. That if I elect to, I may receive my current medical, vision, and dental at my current cost and CVS Caremark will pay for the other part as any current employee of CVS Caremark**

- **(Including medical prescription), dental, and / or vision insurance pursuant to COBRA. CVS Caremark shall subsidize such coverage by**

paying health insurance provider an amount equal to the current company contribution for active employees for coverage until severance end date or the date on which employee becomes eligible for health care coverage from another employer, whichever is earlier.

- **That immediate after separation date, I may elect to continue employees medical.**

- **CVS Caremark will place me with a Career Counseling Team that will assist with my resume, and transition me to another place of employment out side of CVS Caremark.**

- **CVS Caremark will enclose a liability waiver for me to sign that if agreed between CVS Caremark and myself, I must sign this waiver releasing CVS Caremark LLC of any liabilities, and I will not bring any type of legal actions or bring any law suit against CVS Caremark.**

In rebuttal to the allegation pertaining to my termination from CVS CAREMARK:

I attest, and affirm that at no time did I contact the Human Business Partner John Iscaro in the month of July 2012 informing him that: **"I want to snap Nick's (Nicholas J. Guttman) neck"!** There was never a conversation that has ever taken place at all between John Iscaro, and me from June 13, 2012 to August 10, 2012. At no time did I have a conversation with any member of any CVS Member of Management here in Westchester County, New York about anything in regards to my employment or in any relation to my discrimination complaint, or making any threatening statement towards Nicholas J.Guttman.

The only CVS Representative that I had a conversation with in the month of July 2012 was with Employee Relations Representative Linda Knight, at which time she contacted me to ascertain how I was doing health wise. At no time did I mention to her (Linda Knight) or any CVS Employee that I want **to "snap Nick's neck".** Clearly as a former Police Detective, and being an educated man, I know the ramifications of threatening someone. Moreover; I would find it quite inconceivable that I, or any person would call a Human Resources Manager (in July 2012), one who has the authority to hire, and fire an employee for violating company policy, to inform him that I want to snap a CVS Member of Management's neck.

Furthermore; I find it inconceivable that a CVS Human Resources Business Partner would wait until August 23, 2012 to terminate me while at my residence, and officially still out on short term disability, for such gross misconduct when the alleged misconduct was supposedly to be made to him on July 2012. (No exact specific date) It should be noted that this is a serious allegation that I am being terminated for, and this allegation has never been address to me nor has it ever been brought to the fore-front to be addressed with anyone.

In my opinion, I find that CVS Caremark has failed miserably in bringing resolution to the numerous complaints of racial discrimination, age discrimination, retaliation, and work place harassment towards me that were reported, and brought to the to the attention of competent management starting with the CVS CAREMARK LLC Human Resources Business Partner John Iscaro, and to Employee Relations Representative Linda Knight.

Yet absolutely nothing has been done to bring immediate relief to this egregious behavior and gross misconduct that have been demonstrated by Regional Loss Prevention Manager Nicholas J. Guttman, to include the false statements made by Human Resources Business Partner John Iscaro in making the decision to terminate me from CVS CAREMARK LLC.

I have seen where serious complaints of misconduct among management have been committed toward their subordinates. These complaints will make it through the chain of command where it goes unanswered, and eventually result in retaliation towards associates. This includes me whom they terminated from CVS Caremark, where I was treated adversely different from other employees only because of my race and age. My complaints have been brought to the fore-front among Human Resources, and Employee Relations for resolution, and nothing has been done to address these complaints, other than to wrongfully terminate me.

CVS Caremark Management has a demeanor of yes I did it, and there is absolutely nothing you can do about it. Wide spread complaints have been swept under the rug in Westchester County, New York in the Region in which it resides in. It appears very clear to me that this is the type of egregious behavior that the share holders, and the CEO of CVS CAREMARK LLC condone in this Fortune 50 Company.

Wherefore these egregious acts have been committed, against me (Eric Fabian) by CVS CAREMARK LLC Management, and I (Eric Fabian) have exhausted all remedies through CVS CAREMARK LLC grievance process, and CVS CAREMARK LLC has failed in granting Eric Fabian relief for the complaint of racial discrimination, age discrimination, harassment, and retaliation, CVS CAREMARK LLC has violated 42 U.S.C. Code Section 2000-e Title VII Of The Civil Rights act of 1964, .29 U.S.C. Code Section 623-4 Age Discrimination Act Of 1967, and 42 U.S.C. 12203-a Prohibition Against Retaliation.

I therefore submit and pray upon the United States District Court For The Southern District Of New York to grant relief as prescribed by law.

Signed This 2nd Day July 2015

Eric Fabian

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office

33 Whitehall Street, 5th Floor
New York, NY 10004-2112
For General Information: (800) 669-4000
TTY: (800)-669-6820
District Office: (212) 336-3620
General FAX: (212) 336-3625

Wendell Fabian
29 Park Avenue, Apt. 3
White Plains, NY 10605

Re: EEOC Charge No.520-2012-03619
Fabian v. CVS

Dear Mr. Fabian:

The Equal Employment Opportunity Commission (hereinafter referred to as the "Commission"), has reviewed the above-referenced charge according to our charge prioritization procedures. These procedures, which are based on a reallocation of the Commission's staff resources, apply to all open charges in our inventory and call for us to focus our limited resources on those cases that are most likely to result in findings of violations of the laws we enforce.

In accordance with these procedures, we have examined your charge based upon the information and evidence you submitted. You allege that you were discriminated against because of your race, color and age. Respondent's position statement has been previously shared with you. You were provided with an opportunity to submit a rebuttal to this position statement but none was received.

Based upon a review of the documents received, the Commission is unable to conclude that the information establishes a violation of Federal law on the part of Respondent. This does not certify that Respondent is in compliance with the statutes. No finding is made as to any other issue that might be construed as having been raised by this charge.

The Commission's processing of this charge has been concluded. Included with this letter is your Notice of Dismissal and Right to Sue. Following this dismissal, you may only pursue this matter by filing suit against the Respondent named in the charge with 90 days of receipt of said notice. Otherwise, your right to sue will be lost.

Please contact Investigator Mabel Tso at 212-336-3762 if you have any questions.

Sincerely,

_______________for
Kevin J. Berry
District Director

APR 02 2015
____
Date

EEOC Form 161 (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Wendell Fabian**
29 Park Avenue
Apt. 3
White Plains, NY 10605

From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
520-2012-03619	**Mabel Tso, Investigator**	**(212) 336-3762**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Kevin J. Berry

Kevin J. Berry,
District Director

APR 02 2015
(Date Mailed)

Enclosures(s)

cc:

Joanne Borden
Director of Human Resources
CVS CAREMARK STORES INC.
1 Cvs Drive
Woonsocket, RI 02895

Respondent's Attorney
Sean P. O'Connor
MORGAN BROWN & JOY, LLP
200 State Street
Boston, MA 02109

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you *receive* this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was *mailed* to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 – *not* 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.